Office-Supreme Court, U.S.
FILED
SEP 21 1964
JOHN F. DAVIS, CLERK

No. 38

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1964

CITY OF EL PASO, - - - - - - Appellant,

versus

GREENBERRY SIMMONS, - - - - Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

APPENDIX K FOR APPELLEE SIMMONS.

HAROLD S. LONG,
El Paso National Bank Building,
El Paso 1, Texas,

GREENBERRY SIMMONS,
Kentucky Home Life Building,
Louisville, Kentucky 40202,
Counsel for Appellee.

September 18, 1964.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS
EL PASO, DIVISION

Civil No. 2334

GREENBERRY SIMMONS, - - - - - Plaintiff,

versus

CITY OF EL PASO, - - - - - - Defendant.

PLAINTIFF'S REQUEST FOR ADMISSION UNDER RULE 36.

HAROLD S. LONG,
El Paso National Bank Bldg.,
El Paso 1, Texas,

GREENBERRY SIMMONS,
Kentucky Home Life Bldg.,
Louisville Kentucky, 40202

Attorneys for Plaintiff.

March 31, 1964.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS
EL PASO, DIVISION

Civil No. 2334

GREENBERRY SIMMONS, - - - - - *Plaintiff*,

v.

CITY OF EL PASO, - - - - - - *Defendant*.

PLAINTIFF'S REQUEST FOR ADMISSION UNDER RULE 36, F. R. Civ. P.

Plaintiff, Greenberry Simmons, requests Defendant, City of El Paso, within ten days after service of this Request, to make the following admission for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

I. THAT EACH OF THE FOLLOWING DOCUMENTS, EXHIBITED WITH THIS REQUEST, IS GENUINE:

(A) Certified Copy of the Records of the Texas General Land Office, Made by the General Land Commissioner, of a Letter Dated October 26, 1963, From Greenberry Simmons, Plaintiff, Tendering Again All Interest and All Principal Due on These Contracts. It Is Stamped "Received October 30, 1963, General Land Office."

Simmons' Compliance with the Court of Appeals Opinion at p. 545.

"The tender made by the Appellant, assuming it has been or will be kept good, reinstated the contract." *Simmons* v. *City of El Paso*, 320 F. 2d 541, 545.

PLAINTIFF'S EXHIBIT No. 34

GREENBERRY SIMMONS
Attorney at Law
Kentucky Home Life Building
Louisville 2, Kentucky

October 26, 1963

Mr. Jerry Sadler, Commissioner.
General Land Office for the State of Texas
Austin 14, Texas

Dear Mr. Sadler:

Re: N 2 Survey 240, N. D. Mundy, El Paso County,
File No. 147016 and other file numbers.
Survey 235, Laura E. Mundy, El Paso County,
File No. 112121 and other file numbers.

In order to comply with the Court's opinion and the Land Purchase Contracts of 1910 involved and the latter is already filed in the Land Office, enclosed are the following pertaining to the above specified parcels of land:

1. Certified Copy of the Judgment in Greenberry Simmons v. City of El Paso entered September 28, 1963 by the U. S. Court of Appeals for the Fifth Circuit.

2. Letter dated Sept. 28, 1963 from the Clerk of that court pertaining to this Certified Judgment.

3. Copy of the opinion of the Court is reported in 320 F. 2d 541.

4. Certified Copies of Deeds recorded in the County Clerk's office of El Paso County, Texas:

A. D. H. Heineman, heir of D. G. Heineman, grantor to Greenberry Simmons, grantee. Recorded 7 14 52.

B. Affidavit of Heirship of D. H. Heineman, Recorded 7/14 52.

C. Tella H. Heineman, grantor to Greenberry Simmons grantee, Recorded 7 14 52.

D. Affidavit of Heirship of Tella H. Heineman, Recorded 7/14/52.

5. Two applications of Greenberry Simmons to reinstate the forfeited lands and two duplicated checks (not to be cashed) for all back interest, as was tendered in 1952.

Please file all the above instruments and charge the filing fees to my Account No. 742.

6. Current checks for all principal and all interest due on N/2 Survey 240 N. D. Mundy, El Paso County as follows:

A.	All Principal	$492.98
B.	All back interest to July 23, 1952. .	430.11
C.	All back interest from July 23, 1952 to date	171.62

7. Current Checks for all principal and all interest due on Survey 235 Laura E. Mundy as follows:

A.	All Principal	$438.00
B.	All Interest to July 23, 1952.	251.02
C.	All Interest from July 23, 1952 to date	148.92

We believe that the above checks pay all amounts due in full under the Land Purchasing Contracts of 1910 and the court's opinion. However we are tendering a further check to pay any other sums which you believe are due under the contracts and court's opinion and the balance left over to be added to my charge account #742, in the Land Office. This tendered check is for one thousand dollars.

The total of all seven checks tendered is twenty nine hundred thirty two dollars and sixty five cents. This should be much more than the total amount due.

It may be surprising to realize, the fact that my predecessors in title and I have paid the State, over three times the $1.50 contracted purchase price for these lands. In

addition Settlers Glenn and Kilpatrick lived 3 years on these homesite lands to acquire the vested rights in these 3 year Residential Occupational Certificates. These were recorded in 1913 in the Land Office and the County Clerk's Office, as our Muniments of Title. Acts May 16, 1907 pp. 495-496.

I received a letter from the Acting Commissioner of the Land Office on September 6, 1952 with reference to the D. G. Heineman properties, saying "after patent is issued, all title inures to the benefit of the legal owners • • • ". Is this position still maintained by the Land Office?

If you have other suggestions I will be glad to hear from you or if you think best call me collect, Louisville, Ky., Area Code No. 502, Tel. 451-4314 or 583-8905.

Sincerely yours,

Reply to this address:

(s) Greenberry Simmons,
1484 Cherokee Road,
Louisville, Kentucky.

Encs. 17

Page one has the following notations:

CK 438.00 16103
CK 430.11 16104
CK 171.62 16105
CK 492.98 16106
CK 251.02 16107
CK 148.92 16108
CK 1,000.00 16109

RECEIVED
OCT 30 1963
GENERAL LAND OFFICE

Page two has the following notations:
Nos. 16103, 16104, 16105, 16106, 16107, 16108, 16109.

GENERAL LAND OFFICE, AUSTIN, TEXAS.
November 21, 1963

I, JERRY SADLER, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and date first above written.

Commissioner of the
General Land Office

Jerry Sadler.

(Seal)

(B) Seven Checks Payable to the General Land Office, Dated October 28, 1963, Signed by Greenberry Simmons, Received Oct. 30, 1963 and Stamped With the General Land Office Register Nos. 16103-16109, Totaling $2,932.65 for All Interest and All Principal Due to Obtain Legal Title to go With the Already Obtained Equitable Title, so as to Have Full Title to the Two Involved Parcels of Lands, to Comply With the Opinion of the Court. The Seven Checks Are Marked as Plaintiff's Exhibits 34A-34G.

PLAINTIFF'S EXHIBIT No. 34A.

21-10
830

16104
No.
10-28 1963

Pay to the order of General Land Office $430.11

Four hundred thirty and 11 100 ——— Dollars

For All back interest to July 23, 1952
N 2 Survey 240 N. D. Mundy, El Paso
County Texas

To Comply with Court opinion to
reinstate Land purchase
Contract 1910.

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY

:0830 - - 001 0:

PLAINTIFF'S EXHIBIT No. 34B.

21-10
830

16105
No.
10-28 1963

Pay to the order of General Land Office $171.62
One hundred seventy one and 62 100 Dollars
For All back interest from July 23, 1952
to date Nov. 1, 1963 N 2 Survey 240
N. D. Mundy, El Paso Texas
To Comply with Court's opinion
Contract 1910

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY
:0830 - - - 001 :0:

PLAINTIFF'S EXHIBIT No. 34C.

21-10
830

16103
No.
10-28 1963

Pay to the order of General Land Office $438.00 100
Four hundred thirty eight and 00 100 Dollars
For All principal due on Land
Purchasing Contract 1910
Survey 235, Laura E. Mundy
El Paso, County, Texas

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY
:0830 - - - 001 :0:

PLAINTIFF'S EXHIBIT No. 34D.

21-10
830

16109

No.

10-28 1963

Pay to the order of General Land Office $1000.00 100

One thousand 00/100 ——————————Dollars

For Any balance if any due in principal, interest or any other costs, on Contracts of 1910 N 2 Survey 240 N. D. Mundy Survey 235 Laura E. Mundy both El Paso County Texas

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY

:0830 - - - 00[illegible]0:

PLAINTIFF'S EXHIBIT No. 34E.

21-10
830

16107

No.

10-28 1963

Pay to the order of General Land Office $251.02 100

Two hundred fifty one and 02 100 ——————————Dollars

For All interest to July 23, 1952 Survey 235 Laura E. Mundy El Paso Co., Texas. To Comply with Court opinion to reinstate Land Purchasing Contract 1910

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY

:0830 - - - 00[illegible]0:

PLAINTIFF'S EXHIBIT No. 34F.

21-10
830

16108
No.

10-28 1963

Pay to the order of General Land Office $148.92/100
One hundred forty eight and 92 100 Dollars
For All back interest from July 23, 1952
to date, Nov. 1, 1963 Survey 235 Laura E. Mundy,
El Paso County, Texas. To Comply with
Court's opinion, Contract
1910.

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY

:0830 - - - 001 20:

PLAINTIFF'S EXHIBIT No. 34G.

21-10
830

16106
No.

10-28 1963

Pay to the order of General Land Office $492.98
Four hundred ninety two and 98 100 Dollars
For All principal due on Land Purchasing
Contract 1910 for N 2 Surey 240
N. D. Mundy, El Paso County Texas

(s) Greenberry Simmons
Special Account

CITIZENS FIDELITY
BANK & TRUST CO.
LOUISVILLE, KENTUCKY

:0830 - - - 001 20:

(C) Certified Copy of Letter, Dated November 13, 1963 From Jerry Sadler, Commissioner of the General Land Office, to Greenberry Simmons, in Reply to the Above Letter Sent Him, Dated October 26, 1963, in Which He Returned All 17 Enclosures, Including the Seven Checks Which Had Been Tendered to Comply With the Opinion of the Court. Plaintiff's Exhibit No. 35.

PLAINTIFF'S EXHIBIT No. 35.

November 13, 1963

Mr. Greenberry Simmons
Attorney at Law
1484 Cherokee Road
Louisville, Kentucky,

Re: Files 147016 & 142121
El Paso County, Texas

Dear Mr. Simmons:

This will acknowledge receipt of your letter dated October 26, 1963, with enclosures pertaining to the above referenced matter.

We have examined your request as contained in your correspondence and find that such requested action is not appropriate at this time. We are therefore returning to you the following:

1. Certified Copy of the Judgment in Greenberry Simmons v. City of El Paso entered September 28, 1963 by the U. S. Court of Appeals for the Fifth Circuit.

2. Letter dated September 28, 1963 from the Clerk of that court pertaining to this Certified Judgment.

3. Copy of the opinion of the Court is reported in 320 F. 2d 541.

4. Certified Copies of Deeds recorded in the County Clerk's office of El Paso County, Texas.

A. D. H. Heineman, heir of D. G. Heineman, grantor, to Greenberry Simmons, grantee. Recorded 7/14/52.

B. Affidavit of Heirship of D. H. Heineman. Recorded 7/14/52.

C. Tella H. Heineman grantor to Greenberry Simmons grantee. Recorded 7/14/52.

D. Affidavit of Heirship of Tella H. Heineman. Recorded 7/14/52.

5. Two applications of Greenberry Simmons to reinstate forfeited lands and two duplicated checks (marked not to be cashed).

6. Seven (7) original checks returned direct herewith as follows:

General Land Office Register No. 16103	$ 438.00
General Land Office Register No. 16104	430.11
General Land Office Register No. 16105	171.62
General Laind Office Register No. 16106	492.98
General Land Office Register No. 16107	251.02
General Land Office Register No. 16108	148.92
General Land Office Register No. 16109	1,000.00

Yours very truly,

Jerry Sadler, Commissioner.

JS:ths
Enclosures

Register Nos. 16103, 16104, 16105, 16106, 16107, 16108, 16109

REGISTERED MAIL
RETURN RECEIPT
REQUESTED

GENERAL LAND OFFICE, AUSTIN, TEXAS,
November 21, 1963.

I, JERRY SADLER, Commissioner of the General Land Office of the State of Texas, do hereby certify that on the reverse hereof is a true and correct copy of the original of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I, hereunto set my hand and affix the seal of said office the day and date first above written.

Commissioner of the
General Land Office

Jerry Sadler
(Seal)

(D) Signed Identical Copy of the Above Certified Copy of the Letter From Jerry Sadler, General Land Commissioner, Acknowledging the Receipt of Seven Checks for All Interest and All Principal, as Well as the Rest of the 17 Enclosures and Returning Them. Plaintiff's Exhibit No. 35A.

PLAINTIFF'S EXHIBIT No. 35A.

November 13, 1963

Mr. Greenberry Simmons
Attorney at Law
1484 Cherokee Road
Louisville, Kentucky, 40204

Re; Files 147016 & 112121
El Paso County, Texas

Dear Mr. Simmons:

This will acknowledge receipt of your letter dated October 26, 1963, with enclosures pertaining to the above referenced matter.

We have examined your request as contained in your correspondence and find that such requested action is not

appropriate at this time. We are therefore returning to you the following:

1. Certified Copy of the Judgment in Greenberry Simmons v. City of El Paso entered September 28, 1963 by the U. S. Court of Appeals for the Fifth Circuit.

2. Letter dated September 28, 1963 from the Clerk of that court pertaining to this Certified Judgment.

3. Copy of the opinion of the Court is reported in 320 F. 2d 541.

4. Certified Copies of Deeds recorded in the County Clerk's office of El Paso County, Texas.

A. D. H. Heineman, heir of D. G. Heineman, grantor to Greenberry Simmons, grantee. Recorded 7/14 52.

B. Affidavit of Heirship of D. H. Heineman. Recorded 7 14 52.

C. Tella H. Heineman grantor to Greenberry Simmons grantee. Recorded 7 14 52.

D. Affidavit of Heirship of Tella H. Heineman. Recorded 7 14 52.

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General Land Office Register No. 16104	430.11
General Land Office Register No. 16105	171.62
General Land Office Register No. 16106	492.98
General Land Office Register No. 16107	251.02
General Land Office Register No. 16108	148.92
General Land Office Register No. 16109	1,000.00

Yours very truly,

(Signed) Jerry Sadler
Jerry Sadler, Commissioner.

JS:ths
Enclosures

Register Nos. 16103, 16104, 16105, 16106, 16107, 16108, 16109

REGISTERED MAIL
RETURN RECEIPT
REQUESTED

(E) Certified Copy of the City's Purported Patent and Grant (Printed Record, p. 30) Dated January 26, 1956, Granting to the City of El Paso, Its Own Created Municipality, the N/2 Survey 240, Nellie D. Mundy, Which Was Filed in El Paso County Clerk's Office on January 30, 1956, Patent No. 75412 Stating Upon Its Face that the State Reserved the Right to Lease These Lands for Oil and Gas.

"* * * in the same manner as * * * provided for the leasing of Unsold Public Free School Lands * * *"

This was not "Unsold Public Free School Lands" but had been sold over 45 years before to settlers with contracted vested rights, and was still sold at that time, according to the Court of Appeals for the Fifth Circuit in its Opinion, in this suit.

The Patent further states that it relinquishes to the City and not to Simmons, as it had contracted to do,

"* * * all the right and title in and to said land heretofore held and possessed by said State * * *."

This sale to the City, by the Legislative Act of 1955, which is the basis of this Patent, has been declared illegal and void and in violation of the rights given to Plaintiff under the Constitution of the United States, Contract Clause and Due Process, *Simmons* v. *City of El Paso*, 320 F. 2d 541, 543, 544. Plaintiff's Exhibit No. 36.

PLAINTIFF'S EXHIBIT No. 36.

Vol. 25-B 75412 No. 492

IN THE NAME OF THE STATE OF TEXAS

To All to Whom These Presents Shall Come, Know Ye:

I, Allan Shivers, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided, do by these presents Grant to The City of El Paso, A Municipal Corporation, its successors and assigns forever, Three Hundred Twenty Eight & 65 100 (328.65) acres of land situated and described as follows in El Paso County, known as North ½ of Survey 240, S.F.7219, Nellie D. Mundy, about 11 miles North 30° West from El Paso, Texas. Bought and fully paid for on the application of The City of El Paso, by Tom E. Rogers, Mayor, filed in the General Land Office November 14, 1955 under the laws regulating the sale of Public Free School land, and provisions of S. B. 295, Acts 54th Legislature, 1955.

Beginning at the Southeast corner of Section 239, Nellie D. Mundy, in the West line of Section 243, Nellie D. Mundy, for the Northeast corner of this survey and Northeast corner of Section 240;

Thence South 738.2 varas with the West lines of Section 243 and Section 242, Nellie D. Mundy, to the Northeast corner of the South ½ of Section 240;

Thence West 2514 varas to the Northwest corner of the South ½ of Section 240;

Thence North 0° 07' East 738.2 varas with the West line of Section 240 to the Northwest corner of Section 240;

Thence East 2512.. varas to the place of beginning.

This grant shall be subject to any right of way easements, surface lease, or any oil, gas, mineral leases or permits heretofore given by the State on said lands. All mines and mingrals and mineral rights, including oil and gas in and under said lands, together with the right to

enter thereon for the purpose of exploration and development, are hereby reserved to the State of Texas, and said lands shall be subject to lease by the State for mineral exploration and development in the same manner as is now, or may hereafter be provided for the leasing of unsold Public Free School Lands; provided, however, that the School Land Board or other legally constituted authority offering said lands for lease shall place in said leases such rules and regulations as may be deemed proper by said Board or agency for the prevention of pollution and contamination of the fresh waters in, on, and under said lands.

Hereby relinquishing to It the said The City of El Paso and its successors or assigns forever all the right and title in and to said land heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.

(F-152973)

In Testimony Whereof, I have caused the Seal of the State to be affixed, as well as the Seal of the General Land Office. Done at the City of Austin on the Twenty Sixth day of January, in the year of Our Lord One Thousand Nine Hundred and Fifty Six.

(Seal)
(Signed) Allan Shivers,
Governor.

(Seal)
(Signed) J. Earl Rudder,
Commissioner of the General Land Office.

75412

FILED FOR RECORD
IN MY OFFICE
1956 Jan 30 PM 12:16
Raymond L. Telles, Jr.
County Clerk, El Paso County, Texas
(Signed) W. T. Duncan

The State of Texas }
County of El Paso }

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Patent From: State of Texas To: City of El Paso. Dated the 26th day of Jan., 1956, as the same appears of record in the Deed Records of Said County in Volume 1272 Page 554 thereof.

Given under my hand and seal of office at office in El Paso, Texas, this the 26 day of Nov. A.D., 1963.

J. W. Fields, County Clerk,
El Paso County, Texas.
By: (Signed) Antonio Chavez,
Deputy.

(Seal)

The State of Texas }
County of El Paso }

I, J. W. Fields, County Clerk of El Paso County, Texas, and Antonio Chavez, his deputy, further certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we have hereto set our hands and affix the seal of said office, this the 26 day of Nov. A. D. 1963.

(Signed) J. W. Fields,
J. W. Fields, County Clerk of
El Paso County, Texas.

(Signed) Antonio Chavez,
Antonio Chavez, Deputy.

(Seal)

(F) Certified Copy of the City's Purported Patent and Grant (Printed Record, p. 30) and Dated the Same as, and Having the Same Provisions as, the Patent and Grant in (E) Above, Except It Convey Survey 235 Laura E. Mundy and Has County Clerk's Patent No. 75413. Plaintiff's Exhibit No. 37.

PLAINTIFF'S EXHIBIT No. 37.

Vol. 25-B 75413 No. 491

IN THE NAME OF THE STATE OF TEXAS

To All to Whom These Presents Shall Come, Know Ye:

I, Allan Shivers, Governor of the State aforesaid, by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided, do by these presents Grant to The City of El Paso, A Municipal Corporation, its successors and assigns forever, Two Hundred Ninety Two (292.) acres of land situated and described as follows in El Paso County, known as Survey 235, S.F. 7230, Laura E Mundy, about 13½ miles North 13°55' West from El Paso, Texas. Bought and fully paid for on the application of The City of El Paso, by Tom E. Rogers, Mayor, filed in the General Land Office, November 14, 1955 under the laws regulating the sale of Public Free School land, and provisions of S.B. 295, Acts 54th Legislature, 1955.

Beginning at stake and rock mound set on the South line of Laura E. Mundy Survey No. 232 on bench at East end of canyon from which a black gulch on West slope of Mt. Anthony bears East, for the Northwest corner of this survey, 1856 varas South and 3860 varas East by actual survey from an iron pipe and rock mound found at Northeast corner of Survey 174, which latter corner is 1717 varas East of R. R.

Thence from said beginning point, East, at 377 varas pass rock mound set for Southeast corner said Survey 232, at 820.6 varas set rock mound on South side arroyo in small canyon, at 865.7 varas to stake and mound at Northeast corner this survey and Northwest corner Survey No. 5 of said T & P Block 82;

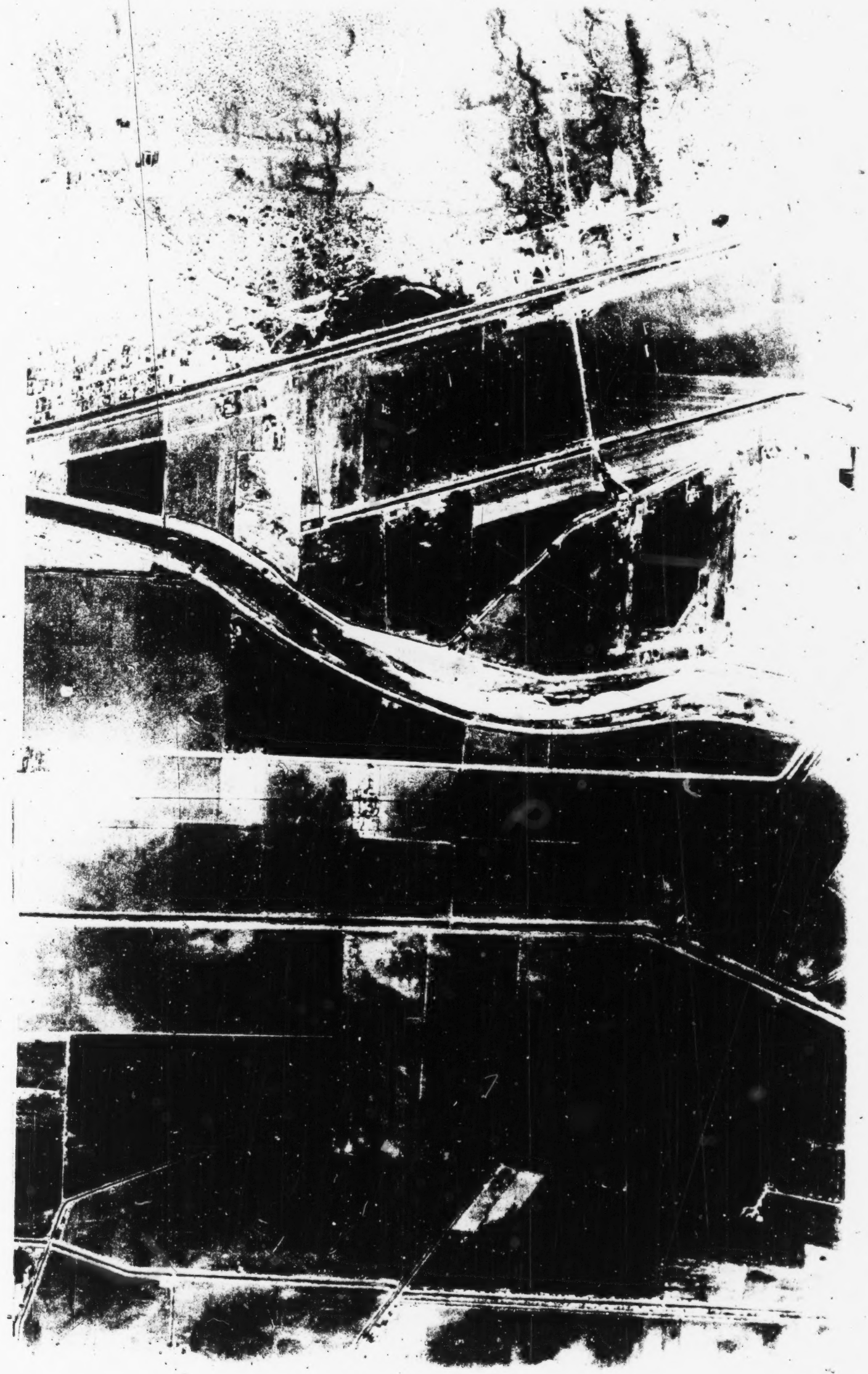
Thence South 0°07′ East with West line of said Survey 5, 1900 varas to Southeast corner this survey, Northeast corner Survey 236 and Southwest corner said Survey No. 5;

Thence West 869.7 varas to stake and mound at original Northwest corner said Survey 236 and Southwest corner this survey;

Thence North 1900 varas to place of beginning.

This Grant shall be subject to any right of way easements, surface leases, or any oil, gas, mineral leases or permits heretofore given by the State on said lands. All mines and minerals and mineral rights, including oil and gas in and under said lands, together with the right to enter thereon for the purpose of exploration and development, are hereby reserved to the State of Texas, and said lands shall be subject to lease by the State for mineral exploration and development in the same manner as is now, or may hereafter be provided for the leasing of unsold Public Free School Lands; provided, however, that the School Land Board or other legally constituted authority offering said lands for lease shall place in said leases such rules and regulations as may be deemed proper by said Board or agency for the prevention of pollution and contamination of the fresh waters, in on, and under said lands.

Hereby relinquishing to It the said The City of El Paso and its successors or assigns forever all the right and title in and to said land heretofore held and possessed by the said State, and I do hereby issue this Letter Patent for the same.



(F-152972)

In Testimony Whereof, I have caused the Seal of the State to be affixed, as well as the Seal of the General Land Office. Done at the City of Austin on the Twenty Sixth day of January in the year of Our Lord One Thousand Nine Hundred and Fifty Six.

(Seal)
(Signed) Allan Shivers,
Governor.

(Seal)
(Signed) J. Earl Rudder,
Commissioner of the General Land Office.

FILED FOR RECORD
IN MY OFFICE
1956 Jan 30 PM 12:17
Raymond L. Telles, Jr.
County Clerk, El Paso County, Texas
(Signed) W. T. Duncan

The State of Texas }
County of El Paso }

I, J. W. Fields, County Clerk in and for El Paso County, State of Texas, do hereby certify that the foregoing is a true and correct copy of the: Patent From: State of Texas To: City of El Paso. Dated the 26th day of Jan., 1956, as the same appears of record in the Deed Records of Said County in Volume 1272 Page 555 thereof.

Given under my hand and seal of office at office in El Paso, Texas, this the 26 day of Nov., A.D., 1963.

J. W. Fields, County Clerk,
El Paso County, Texas.
By: (Signed) Antonio Chavez,
Deputy.

(Seal)

The State of Texas }
County of El Paso }

I, J. W. Fields, County Clerk of El Paso County, Texas, and Antonio Chavez, his deputy, further certify that we are the officers who have the custody of the filed original official records from which these true Certified Copies were made and also we have the legal custody of these filed original official records.

In Testimony Whereof, we have hereto set our hands and affix the seal of said office, this the 26 day of Nov. A. D. 1963.

(Signed) J. W. Fields,
J. W. Fields, County Clerk of
El Paso County, Texas.

(Signed) Antonio Chavez,
Antonio Chavez, Deputy.

(Seal)

AERIAL PHOTO(MOSAIC)N/2 SURVEY 240.

SANUTILLO OVERPASS AERIAL PHOTO MAP, SIMMONS' EXHIBIT NO.39,INCLUDING N/2 NEVILE D.WILDY SURVEY 240,EL PASO COUNTY, TEXAS.

CERTIFIED COPY OF RECORDS OF U.S.DEPT OF AGRICULTURE STABILIZATION AND CONSERVATION SERVICE. FLIGHT DATE: 3-20-62.

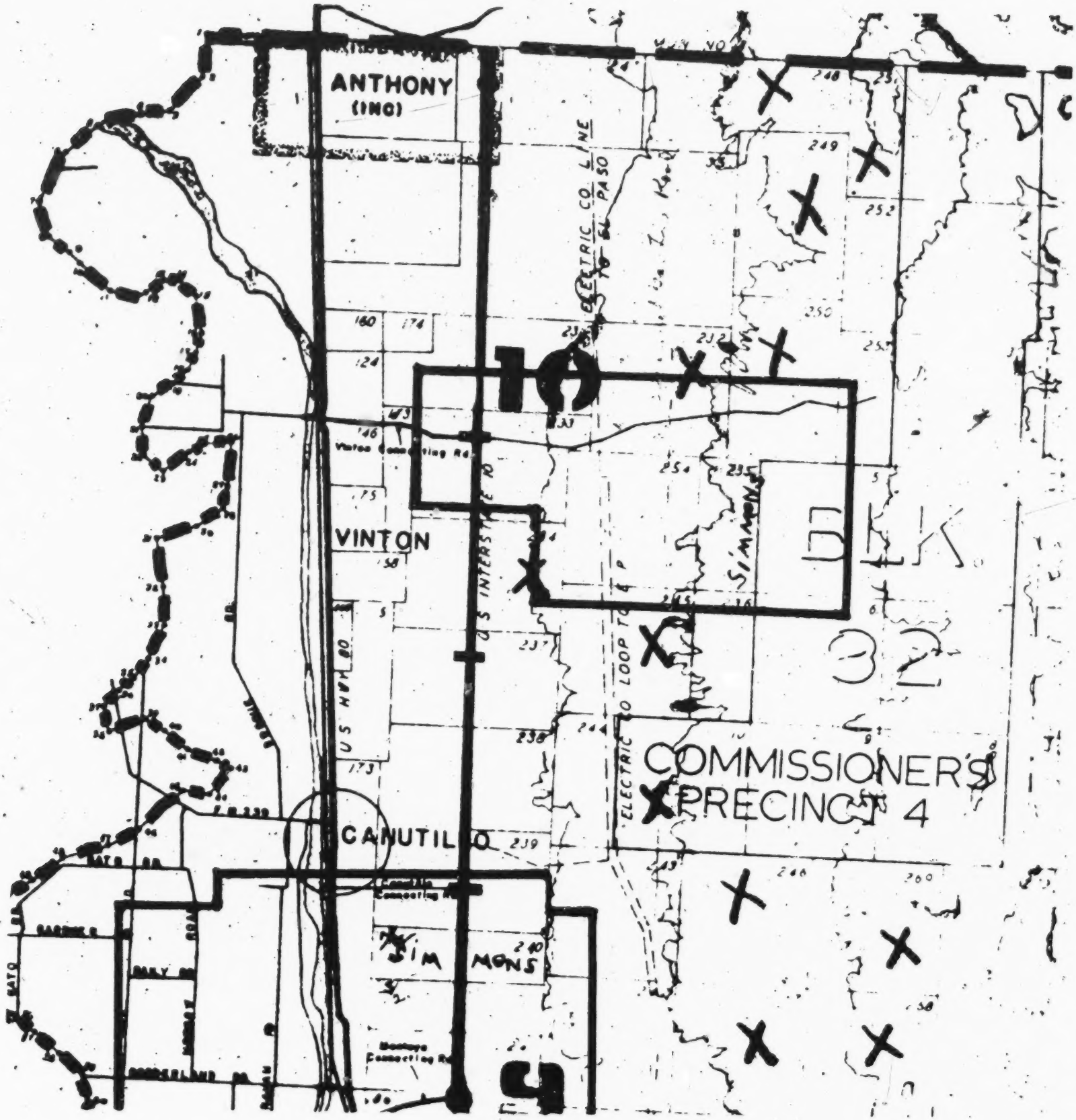
SCALE 1" = 1000'

SIMMONS' EXHIBIT NO.39

(G) "UPPER VALLEY" SECTION OF COUNTY MAP.

A section of the map of El Paso County, made by the Engineering Department of the County and covering the area known locally as the Upper Valley, including the two parcels of land herein involved. The two inset areas are approximately the aerial photos later shown as Simmons' Exhibits Nos. 39, 39A, 40. Some of the other sections included in the 14,000 acres obtained by the Defendant at the same date, and one mile from Survey N/2 240 and adjoining Survey 235, are marked with a large "X" for identification.

Plaintiff's Exhibit No. 38 on Opposite Page.


ANTHONY
(INC)
VINTON
CANUTILLO
SIMMONS
ELECTRIC CO. LINE
TO EL PASO
US INTERSTATE 10
US HWY 80
ELECTRIC TO LOOP
COMMISSIONER'S
PRECINCT 4
DLK
32

"UPPER VALLEY"

SECTION OF MAP OF
EL PASO COUNTY, TEXAS.
SCALE 1" = 5000'
E.P.C.E. = ELPASO COUNTY ENGINEER
REVISED ; JUNE, 1961.

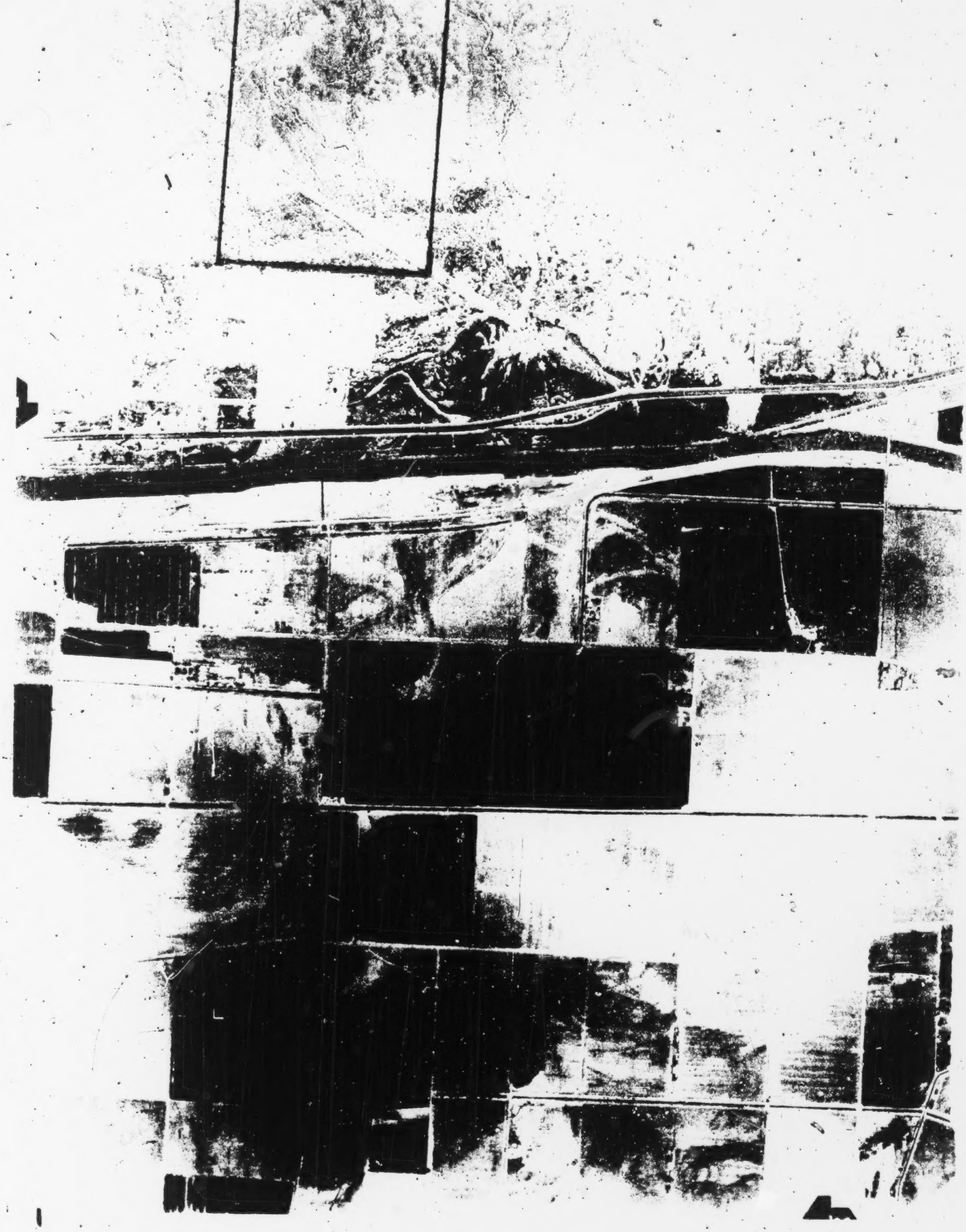
ADDITIONS FOR READY IDENTIFICATION;
SIMMONS, ON SURVEYS N/2 240, 235
X = CLOSE BY SECTIONS, CITY OBTAINED AS PART OF 14000 ACRES, OUTSIDE OF CITY LIMITS.

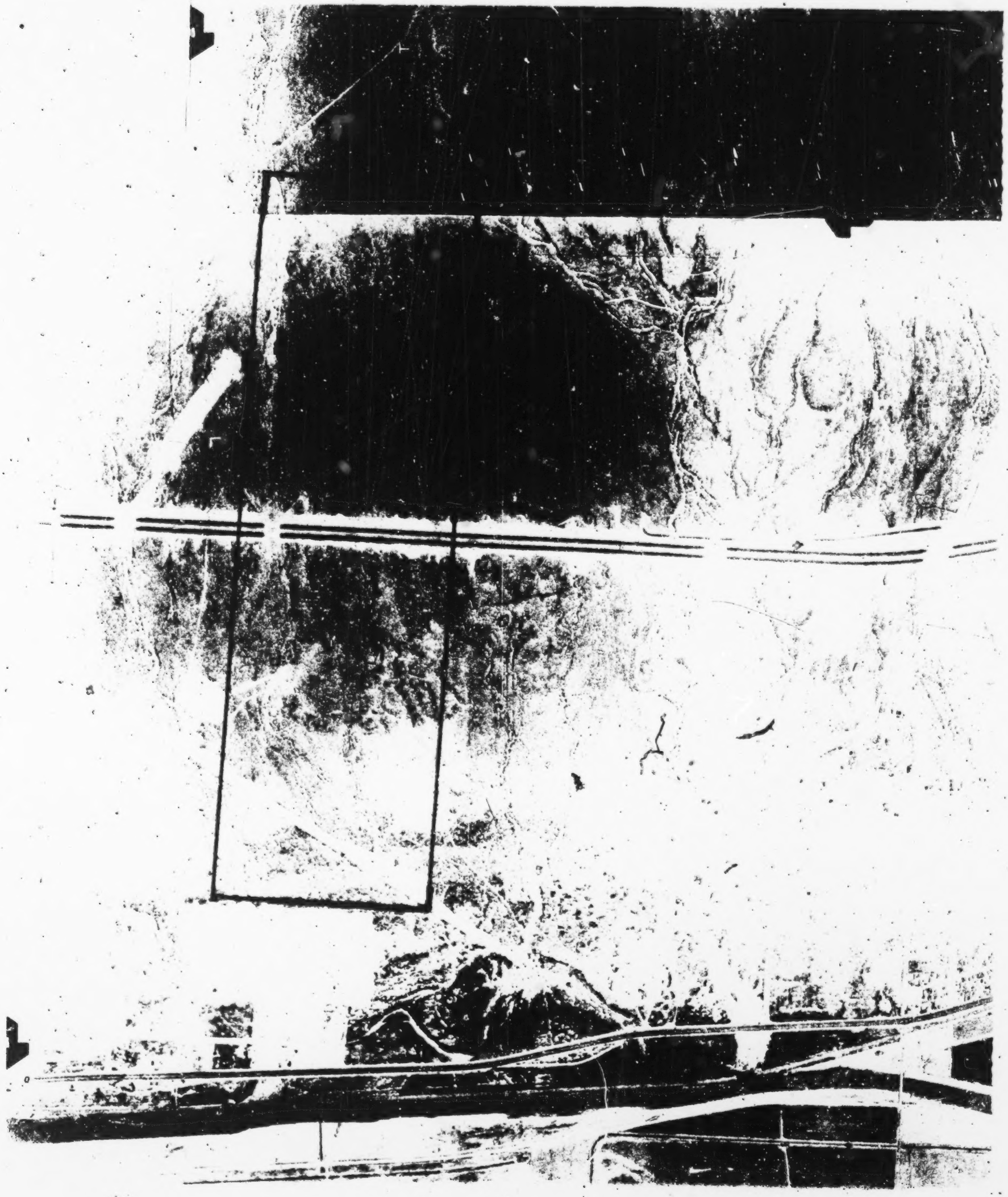
TWO INSETS = AERIAL PHOTOS(MOSAICS) OF EACH PARCEL OF LAND AND SURROUNDING AREAS, SIMMONS EXHIBITS NOS. 39, 40.

(H) AERIAL PHOTO, N/2 SURVEY 240.

A mosaic made of two sectional photographs taken from the air, flight date 3-26-60, and being certified copies of the Records of U. S. Department of Agriculture Stablilization and Conservation Service. Area and surrounding landmarks near the Canutillo connecting road overpass over U. S. Highway Interstate 10, including the inset N/2 Nellie D. Mundy Survey 240, El Paso County, Texas, one of the parcels of land herein involved and marked:

Simmons' Exhibit No. 39 on Opposite Page.





Certification for Simmons' Exhibit No. 39.

No. 418

UNITED STATES OF AMERICA
Department of Agriculture
Washington

I, Orville L. Freeman, Secretary of Agriculture of the United States, pursuant to Title 28, United States Code, Section 1733, do hereby certify that the annexed copy, or each of the specified number of annexed copies, is a true, correct and compared copy of a document in my official custody as hereinafter described: An enlargement from aerial negative DY 9-1AA:168, bearing the date of March 26, 1960, which was secured while photographing El Paso County, Texas, and which is on file in the Western Laboratory, Aerial Photography Division, Agricultural Stabilization and Conservation Service, USDA, Salt Lake City, Utah.

In testimony whereof I have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed in the District of Columbia, this 19th day of February, 1964.

(Signed) Orville L. Freeman,
Secretary,

By (Signed) W. H. Tomsheck,
Chief, Western Laboratory, ASCS, USDA.
(Signed pursuant to the authority of 27 F. R. 8958)

(Seal)

P&O 173 (9-62)

No. 420

UNITED STATES OF AMERICA
Department of Agriculture
Washington

I, Orville L. Freeman, Secretary of Agriculture of the United States, pursuant to Title 28, United States Code,

Section 1733, do hereby certify that the annexed copy, or each of the specified number of annexed copies, is a true, correct and compared copy of a document in my official custody as hereinafter described: An enlargement from aerial negative DYO-1AA:202, bearing the date of March 26, 1960, which was secured while photographing El Paso County, Texas, and which is on file in the Western Laboratory, Aerial Photography Division, Agricultural Stabilization and Conservation Service, USDA, Salt Lake City, Utah.

In testimony whereof I have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed in the District of Columbia, this 19th day of February, 1964.

(Signed) Orville L. Freeman,
Secretary,

By (Signed) W. H. Tomsheck,
Chief, Western Laboratory, ASCS, USDA.
(Signed pursuant to the authority of 27 F. R. 8958)

(Seal)

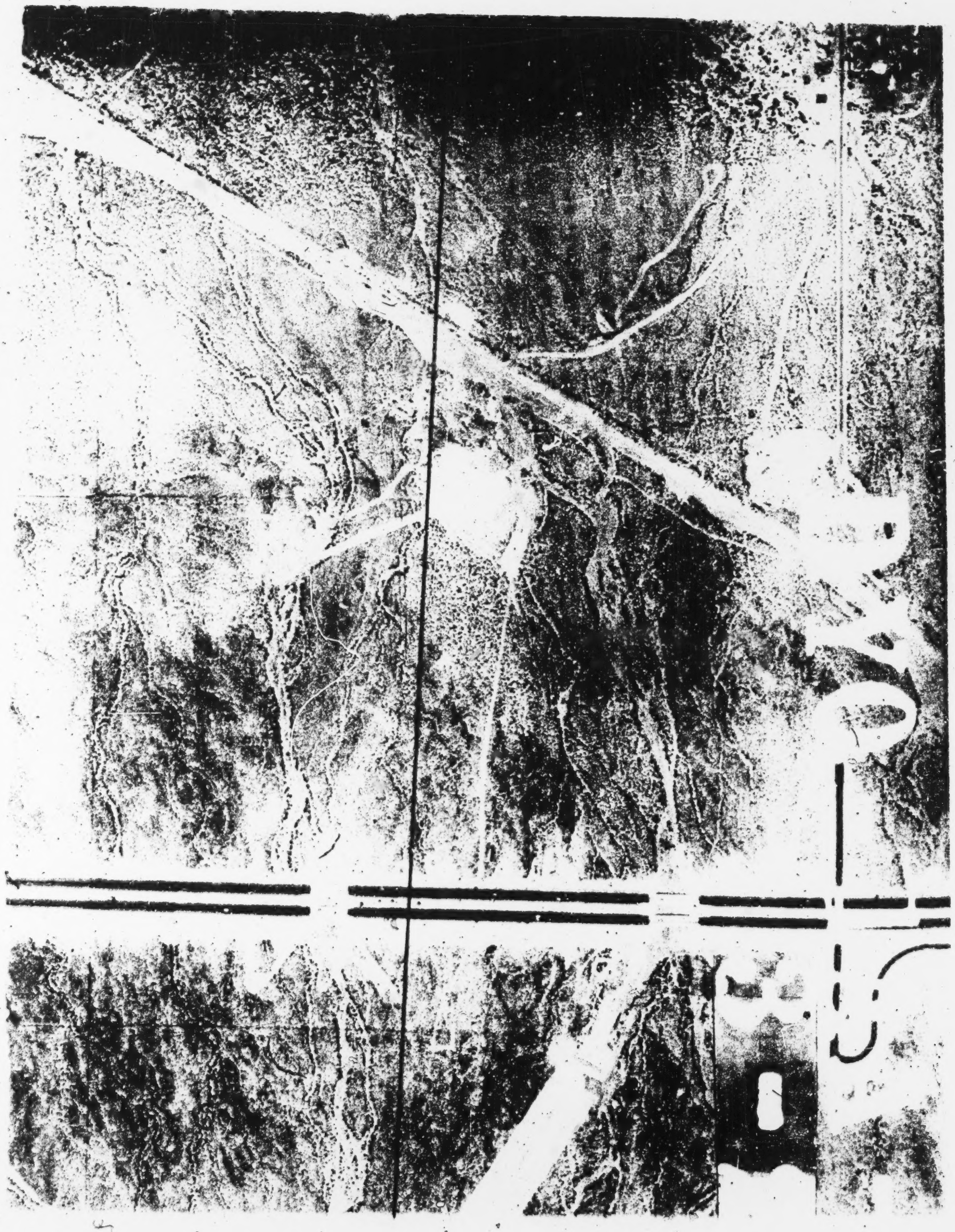
P&O 173 (9-62)

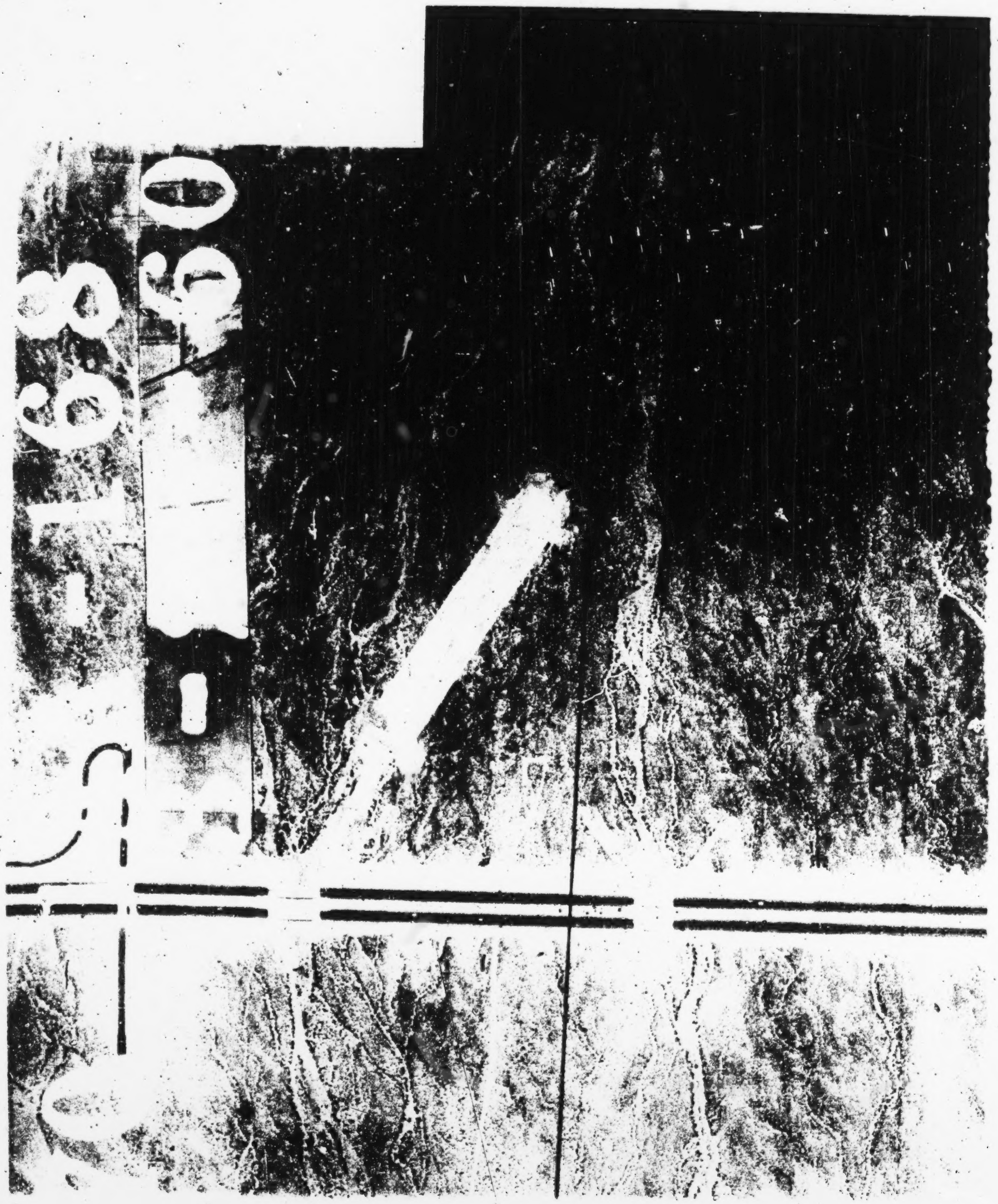
(I) ENLARGEMENT INSET OF AERIAL PHOTO (MOSAIC), N/2 SURVEY 240.

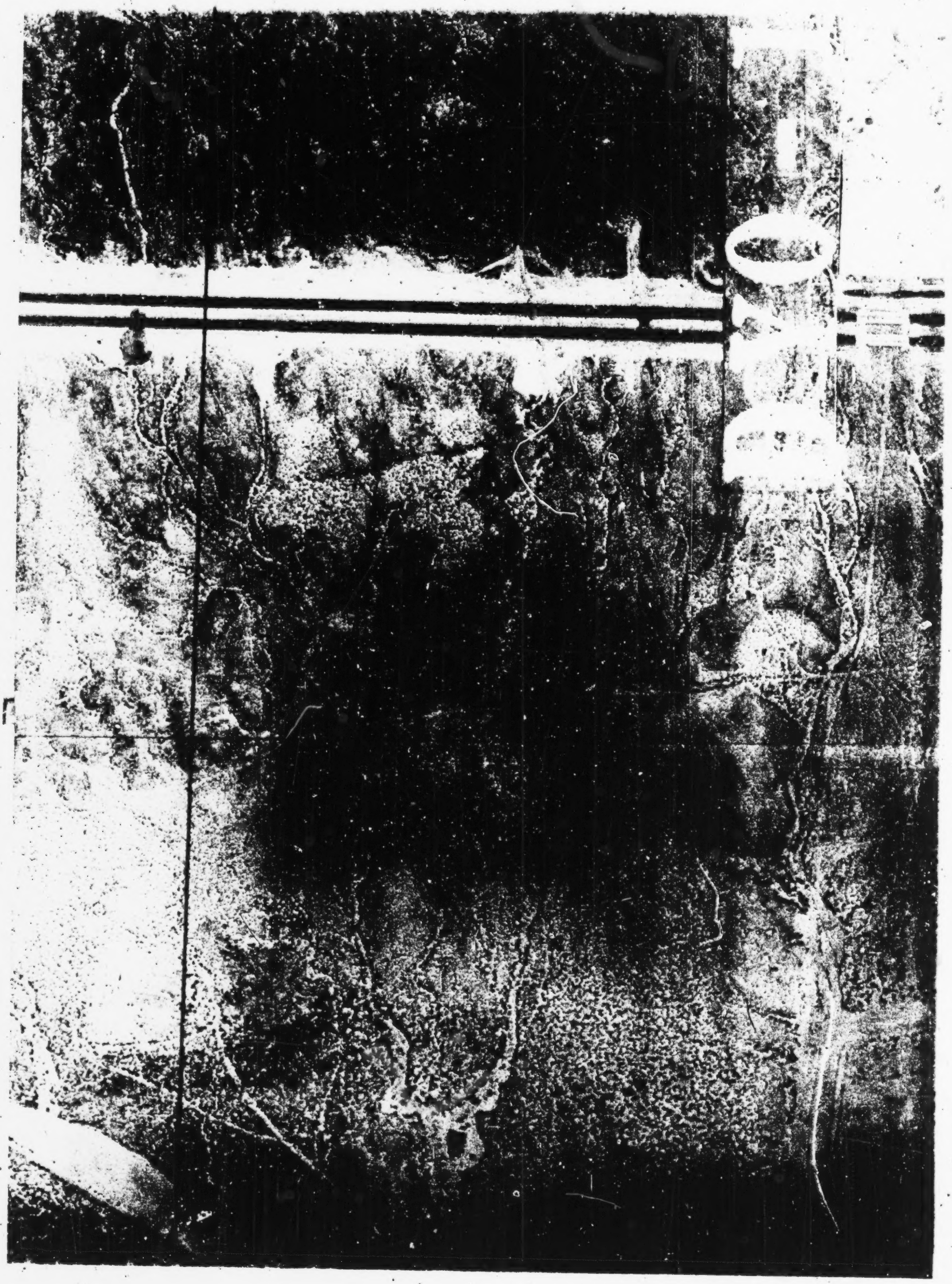
Same as Simmons' Exhibit No. 39, Except Enlarged 2½ Times and Covering Less Surrounding Area. Scale 1" = 400'

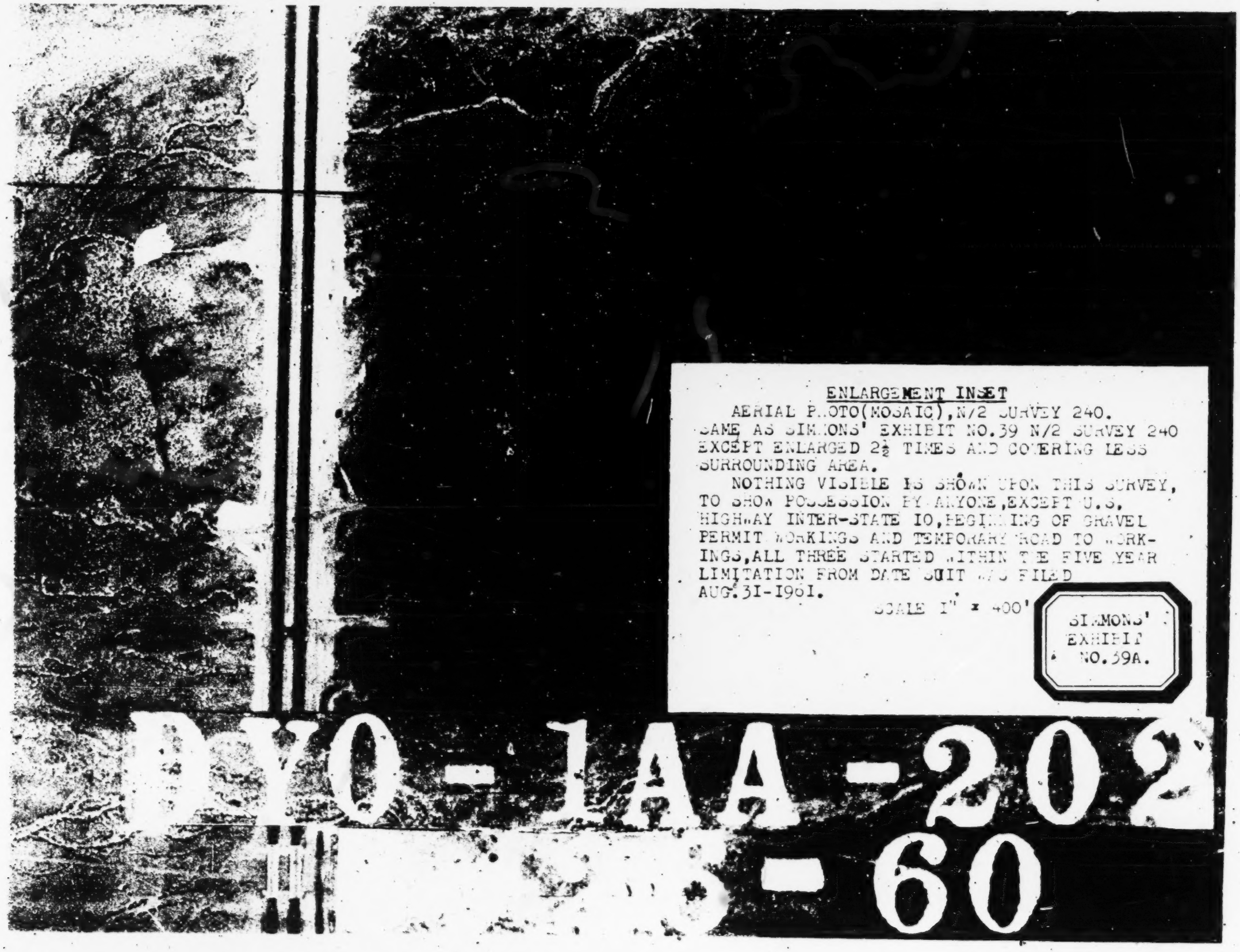
There is nothing visible upon this inset photograph to show possession was taken of this parcel of land, except the U. S. Highway Interstate 10, the gravel permit workings, and temporary road to the gravel workings, none of these were granted for the entire five year period, prior to the filing of this suit, on August 31, 1961.

Simmons' Exhibit No. 39A on the Opposite Page.









ENLARGEMENT INSET

AERIAL PHOTO(MOSAIC),N/2 SURVEY 240.
SAME AS SIMMONS' EXHIBIT NO.39 N/2 SURVEY 240 EXCEPT ENLARGED 2½ TIMES AND COVERING LESS SURROUNDING AREA.

NOTHING VISIBLE IS SHOWN UPON THIS SURVEY, TO SHOW POSSESSION BY ANYONE,EXCEPT U.S. HIGHWAY INTER-STATE 10,BEGINNING OF GRAVEL PERMIT WORKINGS AND TEMPORARY ROAD TO WORKINGS,ALL THREE STARTED WITHIN THE FIVE YEAR LIMITATION FROM DATE SUIT WAS FILED AUG.31-1961.

SCALE 1" = 400'

SIMMONS' EXHIBIT NO.39A.

DX0-1AA-202-60

Certification for Simmons' Exhibit No. 39A.

No. 416

UNITED STATES OF AMERICA
Department of Agriculture
Washington

I, Orville L. Freeman, Secretary of Agriculture of the United States, pursuant to Title 28, United States Code, Section 1733, do hereby certify that the annexed copy, or each of the specified number of annexed copies, is a true, correct and compared copy of a document in my official custody as hereinafter described: An enlargement from aerial negative DYO-1AA-168, bearing the date of March 26, 1960, which was secured while photographing El Paso County, Texas, and which is on file in the Western Laboratory, Aerial Photography Division, Agricultural Stabilization and Conservation Service, USDA, Salt Lake City, Utah.

In testimony whereof I have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed in the District of Columbia, this 19th day of February, 1964.

(Signed) Orville L. Freeman,
Secretary,

By (Signed) W. H. Tomsheck,
Chief, Western Laboratory, ASCS, USDA.
(Signed pursuant to the authority of 27 F. R. 8958)

(Seal)

P&O 173 (9-62)

No. 421

UNITED STATES OF AMERICA
Department of Agriculture
Washington

I, Orville L. Freeman, Secretary of Agriculture of the United States, pursuant to Title 28, United States Code,

Section 1733, do hereby certify that the annexed copy, or each of the specified number of annexed copies, is a true, correct and compared copy of a document in my official custody as hereinafter described: An enlargement from aerial negative DYO-1AA-202, bearing the date of March 26, 1960, which was secured while photographing El Paso County, Texas, and which is on file in the Western Laboratory, Aerial Photography Division, Agricultural Stabilization and Conservation Service, USDA, Salt Lake City, Utah.

In testimony whereof I have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed in the District of Columbia, this 19th day of February, 1964.

(Signed) Orville L. Freeman,
Secretary,

By (Signed) W. H. Tomsheck,
Chief, Western Laboratory, ASCS, USDA.
(Signed pursuant to the authority of 27 F. R. 8958)

(Seal)

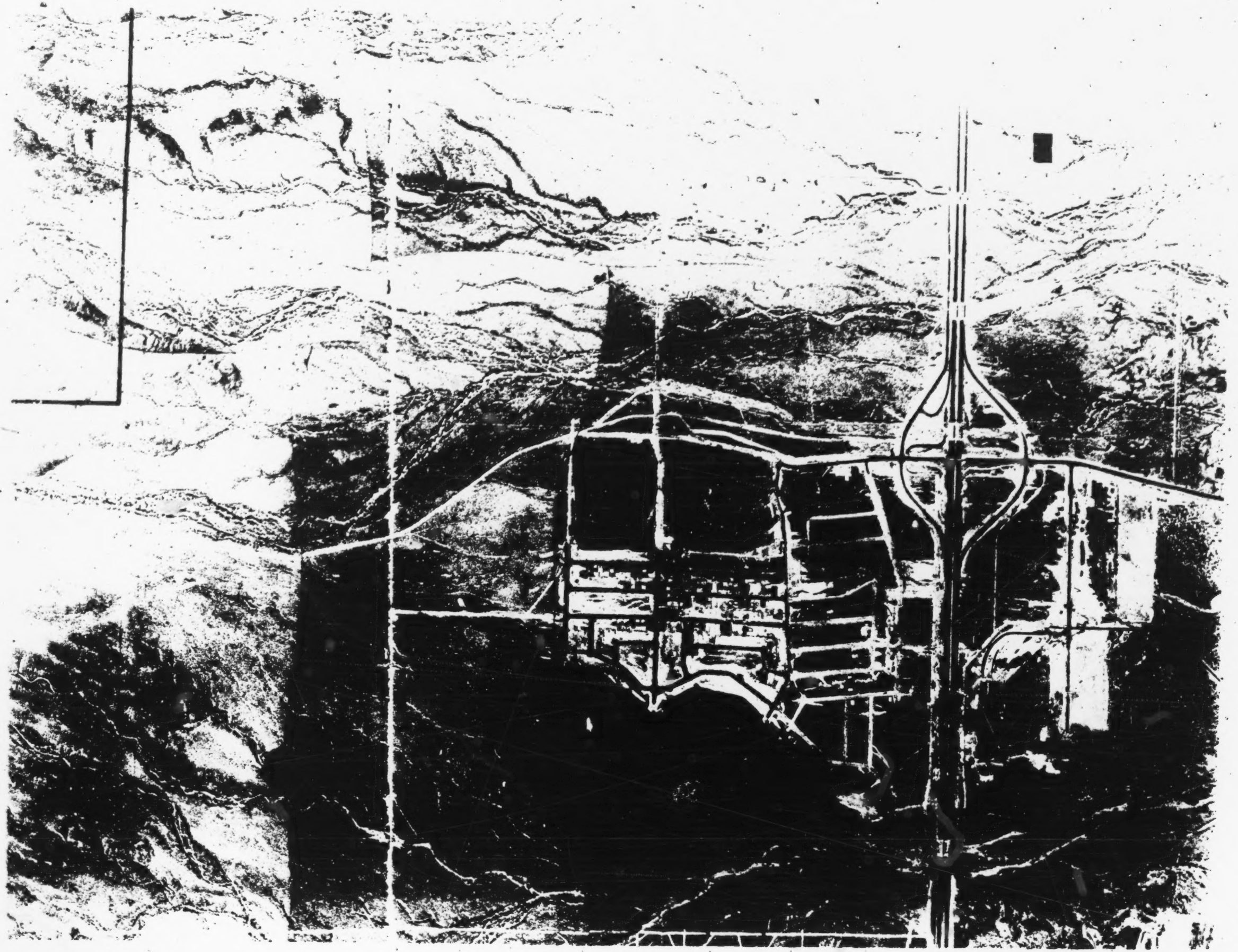
P&O 173 (9-62)

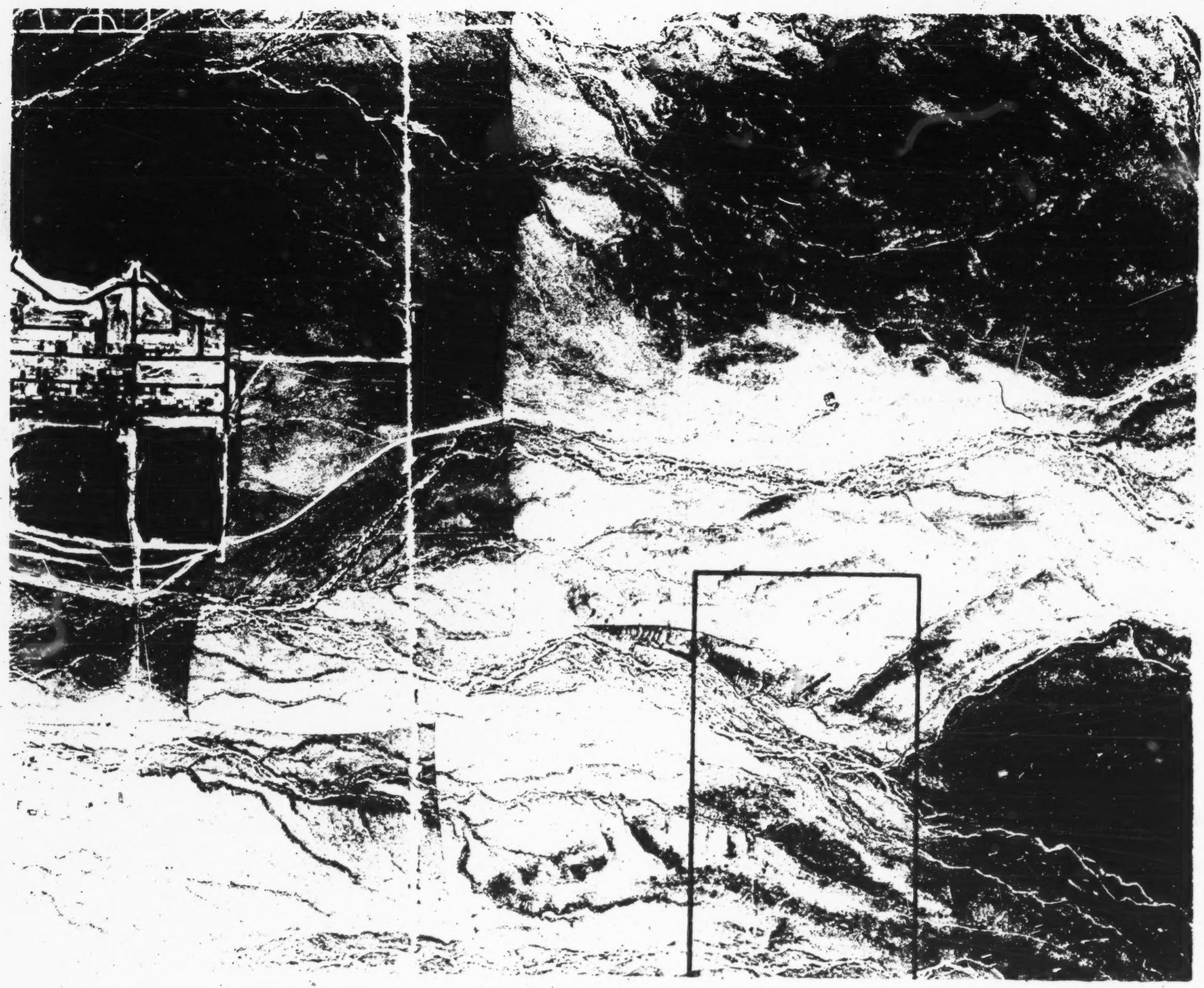
(J) AERIAL PHOTO. SURVEY 235.

A mosaic made of four sectional photographs taken from the air, flight date 8-10-63, part of a photographic map of El Paso County, Texas, photographed by Midwest Aerial Photographic Service, Inc. Area and surrounding landmarks near the Vinton connecting road overpass over U. S. Highway Interstate 10, including the inset Laura E. Mundy Survey 235, one of the parcels of land herein involved and marked: Simmons' Exhibit No. 40.

There is nothing visible upon this inset parcel of land, Laura E. Mundy Survey 235, to show any possession.

Simmons' Exhibit No. 40 on the Opposite Page.





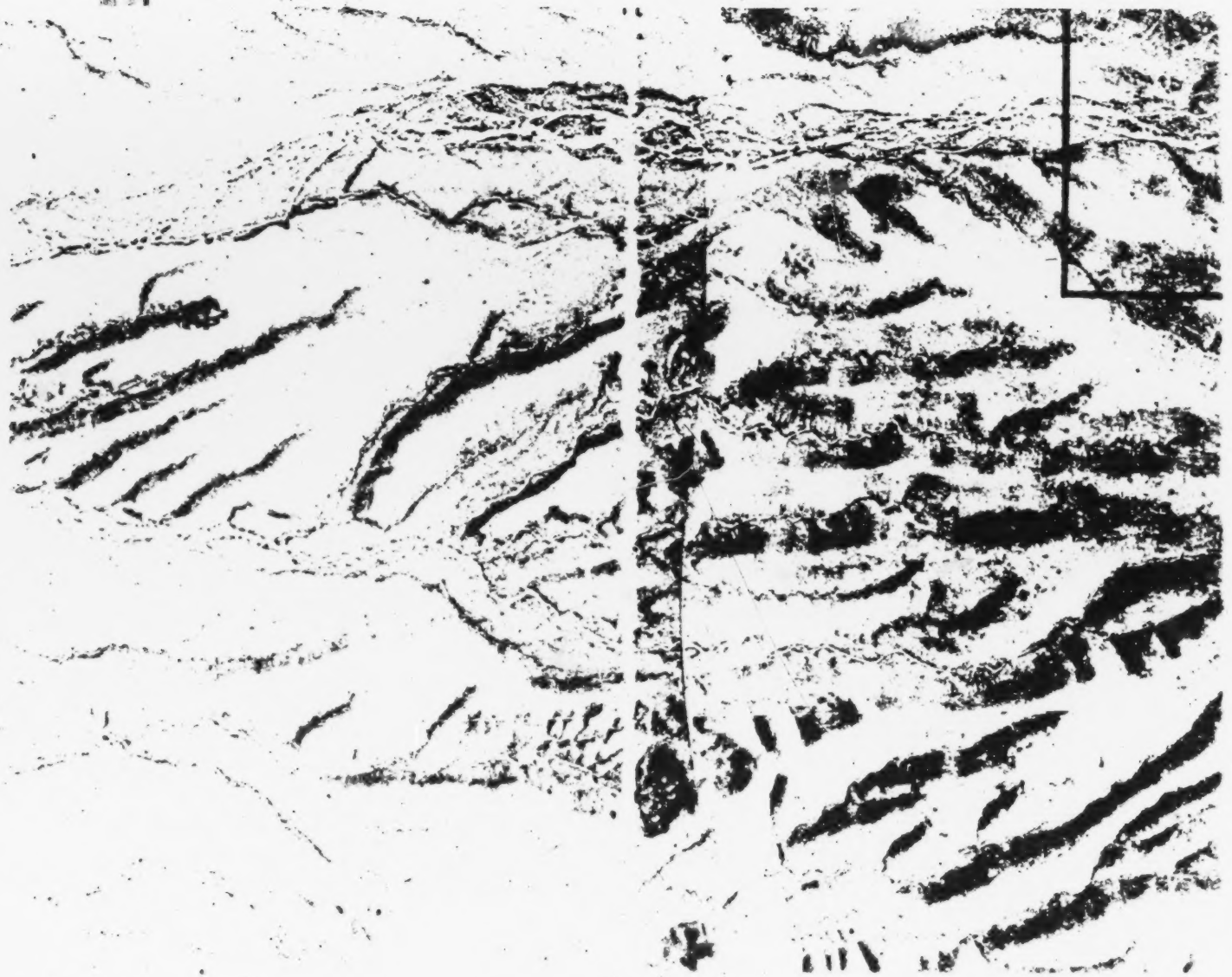
AERIAL PHOTO(MOSAIC)SURVEY 235.

VINTON OVERPASS AERIAL PHOTO MAP, SIMMONS' EXHIBIT NO.40, INCLUDING LAURA E.MUNDY SURVEY 235.

A SECTION OF THE PHOTOGRAPHIC MAP OF EL PASO COUNTY, TEXAS, MADE BY MIDWEST AERIAL PHOTOGRAPHIC SERVICE, INC.
FLIGHT DATE: 8-10-63.

SCALE I" = 1060', approximately.

SIMMONS' EXHIBIT NO. 40



II. THAT EACH OF THE FOLLOWING STATEMENTS IS TRUE.

1. That the City has built no buildings on these two separate parcels of involved lands.

2. That the City has put up no fences on these lands.

3. That the City has made no visible improvements of any kind on these lands, which have remained on them, for a continuous 5 year period between the dates of January 26, 1956, the date the City's purported patents were issued, and August 31, 1961, the date this suit was filed.

4. That the City has not cultivated these lands.

5. That the City has made no complete survey on all four sides of either of these two parcels of land.

6. That when the City had made any partial survey, if any, they were all made within the 5 year period, before the filing of this suit on August 31, 1961.

7. That the City has paid no taxes on these lands.

8. That the City has put nothing on these two particular involved parcels of land with the name of the City of El Paso or the name of the Public Service Board including signs, which have remained on them for a 5 year period between dates the purported Patents were issued and the date this suit was filed.

9. That the posted signs prohibiting Trespassing, which did include the names of the City of El Paso or the Public Service Board, upon such signs, were put on the other portions of the 14,000 acres of land, but